

Disciplinary Orders and Regulatory Decisions



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Disciplinary orders

Disciplinary Committee tribunal orders

- | | | |
|----|-----------------------------------|--------|
| 1. | Mr Carl William Cumiskey BA [FCA] | 3 - 8 |
| 2. | Mr Robert Andrew Blundell FCA | 9 - 16 |

Investigation Committee consent orders

- | | | |
|-----|---------------------------------------|---------|
| 3. | Mr Nicholas Charles Duncan Taylor FCA | 17 |
| 4. | Mr Richard Hilton Savage | 17 |
| 5. | Mr Richard John Matthews FCA | 18 |
| 6. | BVN Partners LLP | 18 |
| 7. | Mr Michael James Lucking ACA | 18 - 21 |
| 8. | Mr Laurence Anthony Flasher FCA | 21 |
| 9. | Mrs Elaine Masters | 21 – 22 |
| 10. | Ensors Accountants LLP | 22 |
| 11. | Mr Martin Lawrence FCA | 23 |
| 12. | Crossley & Davis | 23 – 24 |

Regulatory orders

Audit Registration Committee

- | | | |
|-----|-------------------|----|
| 13. | Agutter-Khanderia | 25 |
|-----|-------------------|----|

Other orders

Practice Assurance Committee

14. Mr Kevin Wheeler FCA

26

DISCIPLINARY COMMITTEE TRIBUNAL ORDERS

1. **Mr Carl William Cumiskey BA [FCA]** of
Chester, United Kingdom

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 8 January 2020

Type of Member Member

Terms of complaint

1. On 7 February 2017, Mr Carl Cumiskey FCA was convicted at Southwark Crown Court of two counts of conspiracy to commit fraud by false representation.

Mr Carl William Cumiskey is therefore liable to disciplinary action under Disciplinary Byelaw 4.1e and 4.2 (g)

Disciplinary bye-laws:

4.1 A member, provisional member, foundation qualification holder, provisional foundation qualification holder or CFAB student (all referred to in these bye-laws as 'respondents') shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member, provisional member, foundation qualification holder, provisional foundation qualification holder or CFAB student at the time of the occurrence giving rise to that liability:

e. if any of the circumstances set out in paragraph 2 exist with respect to him.

4.2 Those circumstances are:

g. that he has, in a court of competent jurisdiction, been convicted of an indictable offence (or has, before such a court, outside England and Wales been convicted of an offence corresponding to one which is indictable in England and Wales.)

Hearing date	8 January 2020
Previous hearing dates	N/A
Pre-hearing review or final hearing	Final hearing
Complaint found proved	Yes – by admission
Sentencing order	Exclusion from membership

Procedural matters and findings

Parties and representation	The Investigation Committee was represented by Ms Sonia Stean The Respondent was not present and was represented by Mr 'A' FCA and Mr 'B' ACA
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Hearing in public or private	The hearing was in public
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Decision on service

The Tribunal was satisfied that service was in accordance with regulations 3 and 5 of the Disciplinary Committee Regulations

Documents considered by the Tribunal

The Tribunal considered the documents contained in the Investigation Committee's bundle

Preliminary matters

1. Notice of the hearing was sent by post to Mr Cumiskey ('the Respondent') on 30 July 2019. The Tribunal was satisfied that service had been in accordance with Regulations 3 and 5 of the Disciplinary Committee Regulations ('DCR') and that, as the Respondent was represented at the hearing and therefore deemed to be present under DCR 22, it was appropriate to proceed in his absence.
2. The Respondent replied on 19 August 2019 saying he was unable to attend the hearing due to his imprisonment. He also applied for permission to be represented at the hearing by two members of the Institute, Mr 'A' and Mr 'B'. He said each has specific knowledge of the issues in the case.
3. At the outset of the hearing Mr 'B' applied for permission to allow both Mr 'A' and himself to represent the Respondent. Ms Stean opposed the application on behalf of the Investigation Committee ('IC').
4. Having taken advice from the legal assessor, the Committee accepted that it had discretion under the Disciplinary Bye-laws to allow a member to be represented by more than one person. In the circumstances of this case, it allowed the application for joint representation.

The Investigation Committee's case

5. The Respondent was admitted to membership of the ICAEW in 1983.
6. On 7 February 2017, after a trial at Southwark Crown Court, the Respondent was found guilty by a jury of two counts of conspiracy to commit fraud by false representation. He was sentenced on 10 February 2017 to a term of ten years imprisonment.
7. The convictions arose out of a fraudulent scheme to borrow money against falsified contracts. The scale of the fraud was put at £160m. The facts underlying the convictions as set out in the sentencing remarks of the trial judge, HH Judge Gledhill QC, are as follows.
8. At the time of the offences the Respondent was finance director of 'C' Ltd. The company's business was laying fibre optic cables through sewers. Customers were charged a connection fee and a rental fee.
9. Finance was a problem for 'C' Ltd and so it turned to 'D' Ltd for funding. 'D' Ltd belonged to one of the Respondent's co-defendants, Mr 'E'. 'D' Ltd advanced funds to 'C' Ltd on being assigned the contract between 'C' Ltd and its customer, thereby receiving entitlement to the rental income from the customer.
10. 'D' Ltd lent money to other companies from its own funds and borrowed money to lend from other companies, typically banks. In the course of the fraud, 'C' Ltd turned to the Belgium Bank, 'F', for the funding needed to purchase 'C' Ltd's contracts.

11. The Judge said that Mr 'E' realised how easy it was to alter the figures on original contracts, for example, by increasing the annual rentals of £10,000 to £100,000 or more. 'D' Ltd then assigned the inflated contract to 'F'. The actual altering and forging of fictitious contracts was largely done by another co-defendant in the proceedings, Mr 'G'. 'F' were duped into advancing money on altered, or in some cases completely fictitious, contracts. Over a period of almost three years, 'F' was defrauded of over £142 million. The actual loss to 'F' is in the region of £117 million. Of the money received from 'F', 'D' Ltd passed on about £40 million to 'C' Ltd.
12. The Judge stated that one of the most important reasons the fraud worked was because 'D' Ltd had an insider in 'F's UK office, who was another co-defendant in the proceedings, Mr 'H'. Mr 'E' bribed Mr 'H' to ensure that 'D' Ltd's applications for funding from 'F' were approved.
13. The fraud was also perpetrated on 'I' and three contracts, amounting to £16.8 million, were assigned by 'D' Ltd to 'I'. However the fraud was discovered because 'D' Ltd failed to ensure 'I' did not notify the customers of the assignment. As a result 'I' requested an inflated annual re-rental payment from one of the customers, and as a result inquiries were instigated. 'I' suffered no loss, however, as it was repaid out of further sums obtained from 'F' in an attempt to prevent 'I' from pursuing the matter.
14. Mr 'E', Mr 'H', Mr 'G' and the Respondent were all convicted of conspiracy to commit fraud. The judge described the evidence against the defendants as compelling.
15. HH Judge Gledhill stated that as the financial director of 'C' Ltd, the Respondent was well aware of the financial difficulties 'C' Ltd faced from its early days until its demise. He had believed in 'C' Ltd and its concept and he was prepared to work hard to make the company a success. The judge said that the Respondent was a 'key player' and without cash flow 'C' Ltd would have collapsed long before it eventually did.
16. It was accepted that until the Respondent was introduced to 'D' Ltd, the idea of raising funding through fraud had not crossed his mind. After meeting Mr 'E' and Mr 'G', he was made aware of the ease of securing funds through false representations and he assisted one of his co-defendants doing just that. HH Judge Gledhill stated that the Respondent was aware how much income was actually generated by the genuine 'C' Ltd contracts and he "could not have failed to see how much money was being paid to 'C' Ltd on the altered and fictitious contracts".
17. HH Judge Gledhill said that not only did the Respondent do nothing about it but also he created and signed documents used to defraud the banks, although it was accepted by the Court that on a number of occasions the Respondent's signature had been forged. He worked 'hand in glove' with Mr 'G' to defraud both 'F' and 'I'. The judge accepted that his criminality was not as great as that of Mr 'G' and that the evidence showed that the Respondent did not know everything that Mr 'G' and 'D' Ltd were doing or how much 'D' Ltd was receiving on the false documents.
18. HH Judge Gledhill considered that the Respondent did know how much 'C' Ltd was being paid by 'D' Ltd on the fraudulent contracts and it was greatly in excess of the figures in the genuine contracts. He recognised that the Respondent was in a different position to Mr 'G' in respect of benefit from the fraud, as he received only his salary and no commission.
19. HH Judge Gledhill said the reason the Respondent became involved was the prospect of large profits in the future. If 'C' Ltd succeeded, as a shareholder, he would stand to make a huge amount of money.
20. When the 'I' fraud came to light, the Respondent took part in providing answers to 'I's questions with the intention that it would stop any further investigation. HH Judge Gledhill however accepted that he did not do that of his own initiative but on direction.

21. On Count 1 HH Judge Gledhill sentenced the Respondent to seven years imprisonment. On Count 2 he imposed a sentence of three years' imprisonment, consecutive to Count 1 making a total of ten years.
22. The Judge also imposed a ten year disqualification on the Respondent from being a company director.
23. The IC's case was that the Respondent has been convicted of two counts of fraud by false representation, which is an indictable offence. Therefore he is liable to disciplinary action under Disciplinary Bye-Law 4.1e by virtue of Disciplinary Bye-Law 4.2g.

The Respondent's case

24. In his Regulation 13 Answers the Respondent admitted the complaint.
25. The Respondent provided a written response to the complaint. In that response he maintained his innocence and blamed others for the fraud. He said all the money received by 'C' Ltd was legitimate and was properly accounted for. He accepted that there had been fraud but said it was committed by 'D' Ltd.
26. He said the prosecution and Court accepted that he received no cash benefit from the fraud. He only received his salary and bonuses totalling £267,000 gross over the three tax years in question, namely 2007/08 to 2009/10. This, he said, was in contrast with the sizeable amounts received by his three co-defendants.
27. The Respondent said the 10 year sentence he received was profoundly excessive. In determining the lengths of the custodial sentences, he said the Judge had reflected the large amounts stolen by the guilty parties and he was caught by this, although he maintained he had played no part in the fraud.
28. Following his conviction, he was assessed as having benefited from the fraud by £267,000, being the total of his gross salary and bonuses over the three year period, and he was given a confiscation order. He had used all his remaining assets and has paid some £195,000 of the £267,000 confiscation order. On 26 September 2018 the confiscation order was varied to £195,212.43 on the basis this represented the Respondent's realisable assets. Mr 'A' told the Tribunal that the difference of £77,000 remains a potential liability that the Respondent may have to meet in the future.
29. The Respondent said in his written submissions that he had appealed against his conviction but the Court of Appeal had turned down his appeal. The Tribunal was informed that the Respondent was intending to apply for his conviction to be reviewed by the Criminal Cases Review Commission.
30. The Respondent provided eight testimonials, six of which were from members of the Institute.
31. In their submissions Mr 'A' and Mr 'B' emphasised that the Respondent maintains his innocence. They submitted that the judge's sentencing remarks painted a worse picture than was actually the case. Mr 'B' said it was not the case that the defendants had rushed into each other's arms with the purpose of committing a fraud or that 'C' Ltd was forced to take desperate measures because it was in desperate financial straits. Mr 'B' said that, like any tech start-up company, 'C' Ltd needed finance. The Respondent had done what would be expected of a diligent finance director in order to secure that finance. He had been introduced to 'D' Ltd on a recommendation from another company who in turn had been recommended by his bank. Mr 'B' pointed out that the fraud had not begun until the first fraudulent contracts were created by 'D' Ltd in around 2007. He stressed that evidence came to light during the trial that 'D' Ltd had previously committed fraud of this type but this evidence was kept from the jury.

32. Mr 'A' set out the Respondent's financial circumstances and the liabilities he now has as a result of the criminal case. Mr 'A' told the Tribunal that whilst in prison the Respondent has taken on the role of a 'listener', performing a role similar to that of the Samaritans. The Respondent's intention when released is to obtain work in the voluntary sector. He is also studying in prison and initiated an art project for the inmates. He continues to have the support of his family and friends.
33. Mr 'A' invited the Tribunal to take a light touch approach to sanction in view of the Respondent's good character, his co-operation with the disciplinary process, the widespread support he has from others, his exemplary conduct since conviction and his plans for rebuilding his future.

Conclusions and reasons for decision

Matters proved by admission

34. The tribunal found the complaint proved by admission.

Matters relevant to sentencing

35. There were no previous disciplinary matters recorded against the Respondent. The Tribunal took into account the Respondent's good character and the mitigation advanced by Mr 'A' and Mr 'B'.
36. These were however serious offences of dishonesty which resulted in a lengthy immediate custodial sentence. The Respondent has been convicted of a conspiracy to defraud on a massive scale. The offences were connected with his work as a financial director of a company. Such behaviour is fundamentally incompatible with continued membership of the Institute.
37. The Tribunal had regard to ICAEW's *Guidance on Sanctions*. The starting point for sanction where a member has been convicted of an offence involving dishonesty or where a member receives a custodial sentence is exclusion.
38. Whilst the Tribunal took into account the mitigation presented by Mr 'A' and Mr 'B' it did not consider, in light of the serious nature of the offences in question, that it provided any reason to depart from this starting point.
39. The Tribunal therefore ordered that the Respondent be excluded from membership. The Tribunal did not consider it appropriate to additionally order a financial penalty.
40. The IC applied for costs in the sum of £6,032.17. The Tribunal accepted the normal starting point was that a member should pay the costs of the disciplinary process and that the amount sought by the IC was not unreasonable.
41. The Tribunal took into account the statement of financial circumstances provided by the Respondent and the submissions made by Mr 'A'. The Tribunal accepted that as a result of the criminal case and the proceeds of crime proceedings, the Respondent has no realisable assets and will have none when he is released from prison. Further it accepted that he will have substantial continuing liabilities as outlined by Mr 'A'. In those circumstances the Tribunal decided it was neither realistic nor appropriate to make an award of costs.

Sentencing order

42. In the Tribunal's view the appropriate and proportionate sanction was to exclude the Respondent from membership of the ICAEW.
43. The Tribunal made no other orders.

Decision on publicity

44. The Tribunal directed that a record of this decision shall be published and the Respondent shall be named in that record.

Non Accountant Chair
Accountant Member
Non Accountant Member

Mr Ron Whitfield
Mr Mike Ranson FCA
Miss Jane Rees

Legal Assessor

Mr Andrew Granville Stafford

038020

**2. Mr Robert Andrew Blundell FCA of
Kent, United Kingdom**

A tribunal of the Disciplinary Committee made the decision recorded below having heard a formal complaint on 14 January 2020

Type of Member Member

Terms of complaints

7. On 7 December 2009, Mr R A Blundell FCA issued an audit report to the Financial Services Authority (now the Financial Conduct Authority), in the name of his firm 'A' LLP, in respect of 'B' Limited for the year ended 30 June 2009, when the audit had not been conducted in accordance with Practice Note 21 'The audit of investment businesses in the United Kingdom (Revised)' in that Mr R A Blundell FCA failed to report that 'B' Limited was not in compliance with the following client money rules:
- a) CASS 7.6.13 in that 'B' Limited had failed to ensure that shortfalls arising from its internal reconciliations were paid into a client bank account by the close of business on the day the reconciliation was performed, and/or
 - b) CASS 7.6.16 in that 'B' Limited had failed to inform the Financial Services Authority without delay that having carried out its internal reconciliations it had not complied with the requirements of CASS 7.6.13.
8. On 28 October 2010, Mr R A Blundell FCA issued an audit report to the Financial Services Authority (now the Financial Conduct Authority), in the name of his firm 'A' LLP, in respect of 'B' Limited for the year ended 30 June 2010, when the audit had not been conducted in accordance with Practice Note 21 'The audit of investment businesses in the United Kingdom (Revised)' in that Mr R A Blundell FCA failed to report that 'B' Limited was not in compliance with the following client money rules:
- a) CASS 7.6.13 in that 'B' Limited had failed to ensure that shortfalls arising from its internal reconciliations were paid into a client bank account by the close of business on the day the reconciliation was performed, and/or
 - b) CASS 7.6.16 in that 'B' Limited had failed to inform the Financial Services Authority without delay that having carried out its internal reconciliations it had not complied with the requirements of CASS 7.6.13.
9. On 1 December 2011, Mr R A Blundell FCA issued an audit report to the Financial Services Authority (now the Financial Conduct Authority), in the name of his firm 'A' LLP, in respect of 'B' Limited for the year ended 30 June 2011, when the audit had not been conducted in accordance with Practice Note 21 'The audit of investment businesses in the United Kingdom (Revised)' in that Mr R A Blundell FCA failed to report that 'B' Limited was not in compliance with the following client money rules:
- a) CASS 7.6.13 in that 'B' Limited had failed to ensure that shortfalls arising from its internal reconciliations were paid into a client bank account by the close of business on the day the reconciliation was performed, and/or
 - b) CASS 7.6.16 in that 'B' Limited had failed to inform the Financial Services Authority without delay that having carried out its internal reconciliations it had not complied with the requirements of CASS 7.6.13.

10. On 7 December 2009, Mr R A Blundell FCA issued an unqualified audit report in the name of his firm, 'A' LLP, on the financial statements of 'B' Limited for the year ended 30 June 2009 when the audit had not been conducted in accordance with the following International Standards on Auditing (UK and Ireland):

- a) International Standard on Auditing (UK and Ireland) 500 'Audit evidence' in that the firm failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion in respect of:
- the recoverability of debtors supported by guarantees from 'C' Ltd and Mr 'D'; and/or,
 - cash and bank balances; and/or,
 - bank loans and overdrafts;

and/or

- b) International Standard on Auditing (UK and Ireland) 570 'Going concern' in that the firm failed to obtain sufficient appropriate evidence regarding the appropriateness of management's use of the going concern assumption in the preparation of the financial statements;

and/or

- c) International Standard on Auditing (UK and Ireland) 700 'The auditor's report on financial statements' when the presentation of the financial statements failed to give a true and fair view in that:
- cash and bank balances were understated; and/or
 - bank overdraft was overstated; and/or,
 - amounts of client money held as disclosed in the notes to the financial statements were overstated.

11. On 28 October 2010, Mr R A Blundell FCA issued an unqualified audit report in the name of his firm, 'A' LLP, on the financial statements of 'B' Limited for the year ended 30 June 2010 when the audit had not been conducted in accordance with the following International Standards on Auditing (UK and Ireland):

- a) International Standard on Auditing (UK and Ireland) 500 'Audit evidence' in that the firm failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion in respect of:
- the recoverability of debtors supported by guarantees from 'C' Ltd and Mr 'D'; and/or,
 - cash and bank balances; and/r
 - bank loans and overdrafts

and/or

- b) International Standard on Auditing (UK and Ireland) 570 'Going concern' in that the firm failed to obtain sufficient appropriate evidence regarding the appropriateness of management's use of the going concern assumption in the preparation of the financial statements;

and/or

- c) International Standard on Auditing (UK and Ireland) 700 'The auditor's report on financial statements' when the presentation of the financial statements failed to give a true and fair view in that:
- cash and bank balances were understated; and/or
 - bank overdraft was overstated; and/or,
 - amounts of client money held as disclosed in the notes to the financial statements were overstated.

12. On 30 November 2011, Mr R A Blundell FCA issued an unqualified audit report in the name of his firm, 'A' LLP, on the financial statements of 'B' Limited for the year ended 30 June 2011 when the audit had not been conducted in accordance with the following International Standards on Auditing (UK and Ireland):

- a) International Standard on Auditing (UK and Ireland) 500 'Audit evidence' in that the firm failed to obtain appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion in respect of:
- the recoverability of debtors supported by guarantees from 'C' Ltd and Mr 'D'; and/or
 - cash and bank balances; and/or,
 - bank loans and overdrafts; and/or,
 - the company's investment in 'E' Ltd;

and/or

- b) International Standard on Auditing (UK and Ireland) 570 'Going concern' in that the firm failed to obtain sufficient appropriate evidence regarding the appropriateness of management's use of the going concern assumption in the preparation of the financial statements;

and/or

- c) International Standard on Auditing (UK and Ireland) 700 (Revised) 'The auditor's report on financial statements' when the presentation of the accounts failed to give a true and fair view in that:
- cash and bank balances were understated; and/or
 - bank overdraft was overstated; and/or,
 - amounts of client money held as disclosed in the notes to the financial statements were overstated.

Hearing date	14 January 2020
Previous hearing date(s)	4 September 2019 - directions
Pre-hearing review or final hearing	Final Hearing
Complaint found proved	Yes, on admission
All heads of complaint proven	Yes, on admission

Sentencing order	Severe reprimand and ordered to pay costs of £18,518.
Procedural matters and findings	No procedural matters were raised
Parties present	Robert Andrew Blundell, represented by Mr Chris Cope of ANCS Ms Victoria Morgan represented the Investigation Committee, together with Mr David Moody, senior case manager
Hearing in public or private	The hearing was in public
Decision on service	In accordance with regulations 3-5 of the Disciplinary Regulations, the tribunal was satisfied to service
Documents considered by the tribunal	The tribunal considered the documents contained in the Investigation Committee's (IC's) bundle together with a witness statement and exhibits submitted on behalf of Mr Blundell and a summary Note prepared by the IC.

The Investigation Committee's case

- 1 At the time of the alleged complaints, Robert Blundell (the Respondent), was a partner in 'A' LLP, an ICAEW member firm based in Tunbridge Wells, registered to carry out audit work with ICAEW. The Respondent was the engagement partner responsible for the audit of the financial statements of 'B' Ltd, and the issue of reports to the Financial Conduct Authority (FCA), in respect of 'B' Ltd's compliance with the rules regarding client money.
2. Following its issue of a Final Notice in respect of 'B' Ltd in October 2014, the FCA found 'B' Ltd had used client funds to meet its business requirements in breach of the Client Assets sourcebook (CASS) Rules. Companies authorised by FCA to hold client money are required to comply with the CASS Rules, whereby client money must be segregated from the company's own funds, a daily calculation must be prepared to check the amount of client money held, and any shortfall made good by a top up transfer from the company's own funds on the same business day.
3. 'B' Ltd had experienced trading difficulties for a number of years, and sought to address the position by implementing refinancing measures which included the injection of cash and obtaining guarantees, totalling £1,096,000, to cover certain irrecoverable debts.
- 4 Following an FCA visit to 'B' Ltd in February 2012 which identified a shortfall of client money, 'B' Ltd was required to close out transactions. It entered Special Administration in March 2012. The latest Administrator's report dated 31 August 2018 estimates a shortfall in client money of some £3.1m, the majority of which was expected to be met by the Financial Services Compensation Scheme.
5. The refinancing measures implemented in 2008-2009 were not sufficient to address the full extent of 'B' Ltd's liquidity issues to enable it to operate with adequate working capital to meet its requirements. It appears to the IC that 'B' Ltd was insolvent at least from 30 June 2009, and was only able to continue to operate from that date by its wrongful use of client money, of at least £1.9m from 30 June 2009, increasing to £2.6m and £2.8m at 30 June 2010 and 2011 respectively.

6. 'B' Ltd calculated its daily top up requirement from office to client account as required under the CASS Rules, but failed to make the necessary transfers on the same business day as the reconciliation, in breach of CASS Rule 7.6.13. 'A' LLP failed to report 'B' Ltd's breach of the CASS Rules to the FCA in each of the 3 years ended 30 June 2009 to 2011.
7. The Respondent was aware of delays by 'B' Ltd in the making of transfers from office to client account but understood those delays were covered by guarantees of £1,096,000 provided by 'C' Ltd. He accepted the directors' assertion that it was permissible to take account of collateral held, the guarantees, in determining the amount of the top-up requirement when this is not the case under the CASS Rules. In any event, the shortfall in client money was materially in excess of the amount of the guarantees. This was not identified by the Respondent. Nor was that shortfall disclosed to the FCA, as required under the CASS Rules, by 'B' Ltd.
8. 'B' Ltd's accounting records were maintained, and the financial statements compiled, on the basis that the top-up transfers to client account had been made on the due date when this was not the case. While those transfers were made at a later date, by then there were other subsequent late transfers, such that outstanding top up transfers (of £1.9m at June 2009 and £2.8m by June 2011) became a permanent feature of the office and client bank reconciliations. In addition, the notes to 'B' Ltd's financial statements show a significant bank overdraft when the cleared balances per the office bank statements were actually in credit because they had not transferred their own funds to client account as they should have done to comply with the CASS rules. Similarly, the client money balances, as disclosed in the notes to the financial statements, were overstated by the amount of the top-up transfers which had not been made by at least £1.9m at 30 June 2009 increasing to £2.6m and £2.8m at 30 June 2010 and 2011.
9. The 2011 financial statements were further distorted by the treatment of the guarantees as cash, in that adjustments were made as if the underlying debt had been settled in cash. The directors proposed to account for the guarantees in this way for purposes of the 2009 accounts, 'A' LLP resisted that proposal in 2009 and 2010, but conceded the point on the 2011 audit when the 2010 comparatives were also restated, such that debtors were reduced and a bank overdraft created even though the debt had not been settled, thus nothing had actually changed by 2011 compared with 2009 or 2010 to justify the change in accounting treatment adopted in 2011.
10. In addition to the debts covered by the above 'C' Ltd guarantee, the company's debtors included further irrecoverable amounts due from a former director, Mr 'D', and/or companies connected to him, of between £609k and £723k over the period 30 June 2009 to 2011, including a hypothecated loan of £200k. Those debts were also covered by a guarantee from a former director of 'B' Ltd, but the directors took no steps to enforce either of the guarantees (or to recover the hypothecated loan) even though there was no prospect of recovery of the underlying debts. The Respondent relied on the directors' representations as to the recoverability of those debts, but insufficient evidence was obtained to provide reasonable assurance that either 'C' Ltd or Mr 'D' held sufficient liquid assets to cover the underlying debts.
11. The Respondent failed to identify the full extent of the shortfall in client money, or that it was payable immediately, such that the true risk of 'B' Ltd's ability to continue as a going concern was not considered.
12. The Respondent failed to obtain appropriate audit evidence to support a directors' valuation of £475k of the company's 16.88% interest in 'E' Ltd at 30 June 2011. This was a start-up company formed to acquire and develop a property in Leicester. No accounts had been filed for 'E' Ltd at the time the 2011 'B' Ltd audit was signed off. The company had paid a nominal £16.88 for its shares, the valuation was based on assumptions as to the valuation and potential returns once the property was built, but no financial information was available

as to the progress of the development or to provide reasonable certainty as to the valuation and cost of the completed development.

13. Based on the above findings, the IC considers that the Respondent failed:
 - i. To report to the FCA 'B' Ltd's breach of CASS Rule 7.6.13 which requires any shortfall in client money to be made good on the same business day as the reconciliation is performed, and 'B' Ltd's breach of CASS Rule 7.6.16 whereby 'B' Ltd was required to self-report its breach of Rule 7.6.13;
 - ii. To obtain sufficient and/or appropriate audit evidence, as required by ISA 500, in respect of the guaranteed debts in each of the 3 years ended 30 June 2009 to 2011;
 - iii. To identify the risk to the company's ability to continue as a going concern arising from its breach of CASS Rule 7.6.13, such that the audit of the 3 years accounts was not conducted in accordance with ISA 570;
 - iv. To obtain appropriate audit evidence to justify the directors' valuation of the company's interest in 'E' Ltd at 30 June 2011; and,
 - v. To identify that the accounts failed to give a true and fair view, due to the top-up transfers being incorrectly treated. As a result, cash balances were understated, the bank overdraft was overstated, and the amount of client money held, as disclosed in the notes to the accounts, was overstated (in that the actual amount of client money held, as shown by the client bank reconciliations, was less than the amount disclosed in the notes to the accounts). In addition, client debtors were understated and bank balances were overstated in the 2011 accounts due to the treatment of the guarantees as cash.
14. The Respondent claims that he was misled by the 'B' Ltd directors, in particular by the directors' assertion that the FCA had agreed to arrangements regarding the company's reliance on the 'C' Ltd guarantees which avoided the need to write off debtors of some £1.1m in the financial statements. The 'B' Ltd directors also asserted that it was permissible to take account of those guarantees in not needing to make the top up transfers.
15. The IC accepts that information may have been withheld from 'A' LLP, and that the Respondent was entitled to gain some assurance from the representations of its two chartered accountant directors, Messrs 'F' and 'G'. However, a review of the correspondence between 'B' Ltd and the FCA, seen by the Respondent, indicates that the FCA did make enquiries regarding the financial position of 'C' Ltd, but those enquiries were to support the re-capitalisation of 'B' Ltd to meet capital adequacy requirements. There is no reference in that correspondence to those guarantees affecting 'B' Ltd's obligation to make the top-up transfers to the client account. Further, regardless of the directors' assurances, the Respondent was aware of the delays in making the top-up transfers and should have reported the breach of the CASS rules to the FCA in any event.
16. The IC acknowledges that the investigation has been carried out with the benefit of hindsight, in particular in the knowledge that the actual shortfall in client money when the company entered administration was significantly greater than the amount of the guarantees. Nevertheless, the failure to make the top-up transfers on the same business day as the reconciliation was performed was a breach of CASS 7.6.13, and there is no evidence that the FCA was at any point made aware of that position. The IC takes the view that responsibility attaches to the Respondent as the Responsible Individual (RI) responsible for signing the audit reports.

17. 'A' LLP followed and completed the full Mercia audit programme and checklist for an FCA regulated entity, covering the key requirements of the CASS Rules. However, it failed to report formally, either to the company or in its reports to the FCA, that 'B' Ltd was in breach of CASS Rule 7.6.13 which requires any shortfall identified in the daily reconciliation, i.e. the daily top-up transfer requirement in this case, to be paid into a client money bank account by the close of business on the day the reconciliation was performed. 'B' Ltd was also in breach of CASS Rule 7.6.16 which requires regulated firms to self-report without delay any failure to comply with the above requirement. 'A' LLP should also have reported 'B' Ltd's breach of Rule 7.6.16 in its own report to the FCA.
18. In the above circumstances, it is contended that The Respondent's conduct fell below the level of professional competence expected of a member, rendering him liable to disciplinary action under Disciplinary Bye-law 4(1)(b).

The Respondent's case

19. The Respondent provided Regulation 13 Answers on 23 August 2019, admitting the facts of all the complaints set out above.
20. 'A' LLP and the Respondent submitted a joint response to the draft Investigation Committee report on 19 June 2018 and provided a copy of the draft loan agreement with 'H', a company audited by 'A' LLP and the Respondent.
21. The Respondent also submitted to the IC on 28 November 2019 his own 33 page witness statement and exhibits.
22. The Respondent has claimed that he considers that he was misled by Mr 'F', in particular as regards FCA being satisfied as to the arrangements in respect of the 'C' Ltd guarantee. While he has stressed that he understood the shortfall in the transfers between office and client accounts did not exceed the amount of the guarantees, he accepts that the delays in the making of those top up transfers to the client account were a breach of the CASS rules that should have been reported to the FCA.

Conclusions and reasons for decision

The tribunal found the complaints 7 – 12 above proved on the basis of the Respondent's admissions.

Matters relevant to sanction

The tribunal had regard to the ICAEW *Guidance on Sanctions* effective from 1 July 2019 and, in particular to section 5 b (1) Audit work of a seriously defective nature. It noted that the recommended sanction starting point for an RI under this head was exclusion and a fine at category C.

The tribunal took into account the following aggravating factors:

- Multiple periods of accounts audited: the complaints related to three years: 2009 – 2011.
- The audit was of an FCA-regulated firm of stockbrokers and was therefore a public interest entity.
- Incorrect, unqualified audit opinions were issued in respect of all three years.
- Numerous clients of 'B' Ltd were affected in that the firm was placed into administration and clients were compensated by the Financial Services Compensation Scheme.

The tribunal took into account the following mitigating factors:

- The latest matter complained of took place nine years ago.

- The complaints were laid under DBL 4(1)(b) (lack of professional competence) and there was no suggestion that the Respondent had acted with a lack of integrity or for motives of personal gain.
- References supplied on behalf of the Respondent indicated that he had carried out auditing work to a satisfactory standard since the matters complained of.
- The Respondent showed insight into his conduct and remorse and had learned lessons from his experience.
- It was not unreasonable for the Respondent to have placed some reliance on assurances given to him by two directors of 'B' Ltd who were both chartered accountants.
- 'A' LLP had been the subject of an ICAEW consent order and had been ordered to pay a fine of £125,000, which the tribunal considered included responsibility for the conduct of the Respondent and that no additional financial penalty was required in his case.
- The Respondent had fully co-operated with the investigation and the disciplinary process.
- There were no previous disciplinary findings against the Respondent.

Sentencing Order

The tribunal imposed a severe reprimand. The IC made an application for costs of the investigation and the preparation for and the hearing of the disciplinary case in the sum of £18,518. The tribunal took into account the schedule of the Respondent's means and ordered that he pay the full amount of the costs applied for within 12 months of the hearing by instalments, the first instalment to be made on 14th February 2020.

Decision on publicity

The tribunal ordered that the decision be publicised, naming the Respondent.

Non Accountant Chair
Accountant Member
Non Accountant Member

Ms Rosalind Wright CB QC
Mr Michael Barton FCA
Ms Mary Kelly

042827

INVESTIGATION COMMITTEE CONSENT ORDERS

3. Mr Nicholas Charles Duncan Taylor FCA

Consent order made on 13 February 2020

With the agreement of Mr Nicholas Charles Duncan Taylor of Skipton, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £3,150 and pay costs of £5,605.

1. On 22 May 2014, Mr Nicholas Taylor FCA improperly issued an accountant's report to the Solicitors Regulation Authority in respect of "A" Limited for the period ended 30 November 2013, in that he failed to report a breach of Part 2 of the Solicitors Accounts Rules 2011 to the Solicitors Regulation Authority in that £1.3m of client money was paid into an office account without client instruction and not transferred to the client account until six working days later. This is in breach of Part 6 of the Solicitors Accounts Rules 2011.
2. On 22 May 2014, Mr Nicholas Taylor FCA improperly issued an accountant's report to the Solicitors Regulation Authority in respect of "A" Limited for the period ended 30 November 2013, in that he failed to make appropriate enquiries regarding:
 - a. whether client accounts were being reconciled at least every five weeks as required by Part 4 of the Solicitors Accounts Rules 2011; and/or
 - b. whether accounts were properly opened and held as client bank accounts as required by Part 2 of the Solicitors Accounts Rules 2011; and/or
 - c. whether accounting records were properly written up to show dealings with client money received, held or paid by the firm, including client money held outside a client account as required by Part 4 of the Solicitors Accounts Rules 2011; and/or
 - d. whether the £1.3m received from a client was made in respect of instructions relating to an underlying transaction or to a service forming part of the firm's normal regulated activities as required by Part 2 of the Solicitors Accounts Rules 2011.

042608

4. Mr Richard Hilton Savage

Consent order made on 13 February 2020

With the agreement of Mr Richard Hilton Savage of Leeds, United Kingdom, the Investigation Committee made an order that he be reprimanded and pay costs of £500 with respect to a complaint that:

That Mr Richard Hilton Savage, as Supervisor of the Individual Voluntary Arrangement of Mr "A", failed to comply with Paragraph 9.1 of Statement of Insolvency Practice 3 and/or Paragraph 16 of Statement of Insolvency Practice 3.1 as between April 2014 and May 2016 he failed to issue a termination certificate in a timely manner.

044861

5. Mr Richard John Matthews FCA

Consent order made on 17 February 2020

With the agreement of Mr Richard John Matthews of Derby, United Kingdom, the Investigation Committee made an order that he be severely reprimanded, fined £5,600 and pay costs of £2,187 in respect of the complaints that:

1. Between August 2017 and 25 September 2017, Mr Richard Matthews FCA failed to notify his firm of his potential employment with the “A” Group, in breach of his firm’s policy set in accordance with paragraph 2.47 of the FRC Revised Ethical Standard.
2. On 2 January 2018, Mr Richard Matthews FCA commenced employment with the “A” Group in a key management position before the end of one year from 18 September 2017, which was the day on which he ceased to be the statutory auditor of the following companies in the “A” Group:
 - a) “B” Limited;
 - and/or
 - b) The “C” Limited;
 - and/or
 - c) The “D” Limited

043976

6. BVN Partners LLP

Consent order made on 17 February 2020

With the agreement of BVN Partners LLP of London, United Kingdom, the Investigation Committee made an order that it be reprimanded; fined £4,000; and pay costs of £2,455 in respect of the complaint that:

1. Between 25 October 2017 and 26 March 2018, BVN Partners LLP failed to provide handover information in relation to Mr “A” and/or “B” Limited as requested by “C” Limited in breach of paragraph 210.16 of the Code of Ethics.

040487

7. Mr Michael James Lucking ACA

Consent order made on 17 February 2020

With the agreement of Mr Michael James Lucking of Nottingham, United Kingdom, the Investigation Committee made an order that he be reprimanded, fined £3,500 and pay costs of £2,710 in respect of the complaints that:

1. On 29 May 2013 Mr Michael Lucking ACA issued an audit report in the name of his firm, on the financial statements of “A” Limited for the year ended 30 September 2012 when the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland), including:

- a. International Standard on Auditing (UK and Ireland) 300 'Planning an audit of financial statements' in that the audit was not planned so that an engagement could be performed in an effective manner;

and/or

- b. International Standard on Auditing (UK and Ireland) 230 'Audit Documentation' in that the audit failed to prepare, on a timely basis, audit documentation that provides:
 - i. a sufficient and appropriate record of the basis of the audit report; and
 - ii. evidence that the audit was performed in accordance with ISA's (UK and Ireland) and applicable legal and regulatory requirements;

and/or

- c. International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion.
2. On 7 May 2014 Mr Michael Lucking ACA issued an audit report in the name of his firm, on the financial statements of "A" Limited for the year ended 30 September 2013 when the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland), including:

- a. International Standard on Auditing (UK and Ireland) 300 'Planning an audit of financial statements' in that the audit was not planned so that an engagement could be performed in an effective manner;

and/or

- b. International Standard on Auditing (UK and Ireland) 230 'Audit Documentation' in that the audit failed to prepare, on a timely basis, audit documentation that provides:
 - i. a sufficient and appropriate record of the basis of the audit report; and
 - ii. evidence that the audit was performed in accordance with ISA's (UK and Ireland) and applicable legal and regulatory requirements

and/or

- c. International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion.
3. On 27 May 2015 Mr Michael Lucking ACA issued an audit report in the name of his firm, on the financial statements of "A" Limited for the year ended 30 September 2014 when the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland), including:

- a. International Standard on Auditing (UK and Ireland) 300 'Planning an audit of financial statements' in that the audit was not planned so that an engagement could be performed in an effective manner;

and/or

- b. International Standard on Auditing (UK and Ireland) 230 'Audit Documentation' in that the audit failed to prepare, on a timely basis, audit documentation that provides:

- i. a sufficient and appropriate record of the basis of the audit report; and
- ii. evidence that the audit was performed in accordance with ISA's (UK and Ireland) and applicable legal and regulatory requirements;

and/or

- c. International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion.
4. On 23 June 2016 Mr Michael Lucking ACA issued an audit report in the name of his firm, on the financial statements of "A" Limited for the year ended 30 September 2015 when the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland), including:
- a. International Standard on Auditing (UK and Ireland) 300 'Planning an audit of financial statements' in that the audit was not planned so that an engagement could be performed in an effective manner;

and/or

- b. International Standard on Auditing (UK and Ireland) 230 'Audit Documentation' in that the audit failed to prepare, on a timely basis, audit documentation that provides:
 - i. a sufficient and appropriate record of the basis of the audit report; and
 - ii. evidence that the audit was performed in accordance with ISA's (UK and Ireland) and applicable legal and regulatory requirements;

and/or

- c. International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion.
5. On 26 May 2017 Mr Michael Lucking ACA issued an audit report in the name of his firm, on the financial statements of "A" Limited for the year ended 30 September 2016 when the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland), including:
- a. International Standard on Auditing (UK and Ireland) 300 'Planning an audit of financial statements' in that the audit was not planned so that an engagement could be performed in an effective manner;

and/or

- b. International Standard on Auditing (UK and Ireland) 230 'Audit Documentation' in that the audit failed to prepare, on a timely basis, audit documentation that provides:
 - i. a sufficient and appropriate record of the basis of the audit report; and
 - ii. evidence that the audit was performed in accordance with ISA's (UK and Ireland) and applicable legal and regulatory requirements;

and/or

- c. International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion.

043515

8. Mr Laurence Anthony Flasher FCA

Consent order made on 17 February 2020

With the agreement of Mr Laurence Anthony Flasher of Leeds, United Kingdom, the Investigation Committee made an order that he be reprimanded, fined £3,000 and pay costs of £3,121 in respect of the complaints that:

1. Mr Laurence Flasher FCA failed to submit the results of an external cold file review, on behalf of his firm, on the audit of The "X" Trust for the year ended 31 March 2013, to ICAEW within one month of it being completed, in breach of an assurance given to the Audit Registration Committee on 19 December 2012.
2. On 18 December 2013, Mr Laurence Flasher FCA issued an unmodified audit report in the name of his firm, on the financial statements of The "X" Trust for the year ended 31 March 2013 which stated that the auditor's responsibility is to audit and express an opinion on the financial statements in accordance with applicable law and International Standards in Auditing (UK and Ireland), when he had failed to prepare, on a timely basis, audit documentation that provided a sufficient and appropriate record of the basis for the auditor's report, and audit documentation that provided evidence that the audit was performed in accordance with ISA's (UK and Ireland) and applicable legal and regulatory requirements in respect of:
 - a. the authorisation and control of investment decisions and charitable grants, and/or
 - b. the appropriateness of legal expenses incurred by the charityin breach of International Standard on Auditing (UK and Ireland) 230 'Audit documentation'.

036472

9. Mrs Elaine Masters

Consent order made on 12 March 2020

With the agreement of Mrs Elaine Masters of Belfast, United Kingdom, the Investigation Committee made an order that she be severely reprimanded, fined £3,150; and pay costs of £2,725 in respect of the complaints that:

As Nominee of the Individual Voluntary Arrangement (IVA) of Mr "A", Mrs Elaine Masters

- a) Failed to comply with Rule 8.22 and/or Rule 15.5 and/or 15.11 of the Insolvency Rules 2016 as her notification to creditors dated 17 July 2017 did not provide the required 14 days' statutory notice period of the meeting to consider the approval of the IVA.

and/or

- b) Failed to comply with Rule 15.5 of the Insolvency Rules by not providing correct contact details in the notification to creditors dated 17 July 2017 and 9 August 2017.

and/or

- c) Failed to comply with Rule 8.22 of the Insolvency Rules 2016 and/or Statement of Insolvency Practice 3.1 by providing incorrect dividend information to creditors on the comparison between a bankruptcy and an Individual Voluntary Arrangement in both notices sent to creditors dated 17 July 2017 and 9 August 2017.

and/or

- d) Failed to comply with Rule 15.5 and/or Rule 15.8 of the Insolvency Rules 2016 and/or Statement of Insolvency Practice 3.1 by providing two different dates for a creditors meeting in the notice dated 9 August 2017.

and/or

- e) Failed to comply with Rule 8.26 and/or the Insolvency Regulations to ensure the Individual Insolvency Register was updated with the correct date for implementation of the Individual Voluntary Arrangement.

040835

10. Ensors Accountants LLP

Consent order made on 12 March 2020

With the agreement of Ensors Accountants LLP of Suffolk, United Kingdom, the Investigation Committee made an order that it be reprimanded, fined £1,925, and pay costs of £3,355 in respect of the complaints that:

1. On 19 January 2018, Ensors Accountants LLP signed an audit report on the financial statements of "A" for the year ended 30 June 2017, which stated that the accounts had been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice when:
 - a. the financial statements failed to comply with Financial Reporting Standard 102 paragraph 10.21 in relation to the treatment of a gain on disposal of land in the comparative period; and/or
 - b. the financial statements failed to comply with Financial Reporting Standard 102 paragraph 2.42 in relation to the treatment of certain expenditure.
2. On 18 February 2019, Ensors Accountants LLP signed an audit report on the financial statements of "A" for the year ended 30 June 2018, which stated that the accounts had been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice when the financial statements did not comply with Financial Reporting Standard 102 paragraph 10.21 in relation to the treatment of certain expenditure in the comparative period.

041741

11. Mr Martin Lawrence FCA

Consent order made on 12 March 2020

With the agreement of Mr Martin Lawrence of Birmingham, United Kingdom, the Investigation Committee made an order that he be reprimanded, fined £5,250; and pay costs of £2,965 in respect of the complaints that:

1. On 28 November 2017 Mr Martin Lawrence FCA issued an audit report in the name of his firm, M Lawrence & Co, on the financial statements of "A" PLC for the period ended 31 August 2017 when the audit was not conducted in accordance with International Standards on Auditing (UK and Ireland), including:

a. International Standard on Auditing (UK and Ireland) 300 'Planning an audit of financial statements' in that the audit documentation did not include the overall audit strategy and/or the overall audit plan;

And/or

b. International Standard on Auditing (UK and Ireland) 230 'Audit Documentation' in that the audit failed to prepare, on a timely basis, audit documentation that provides:

i. a sufficient and appropriate record of the basis of the audit report; and

ii. evidence that the audit was performed in accordance with ISA's (UK and Ireland) and applicable legal and regulatory requirements;

And/or

c. International Standard on Auditing (UK and Ireland) 500 'Audit Evidence' in that the auditor failed to obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion.

2. Mr Martin Lawrence FCA incorrectly completed the 2018 ICAEW annual return for M Lawrence & Co in that he did not disclose that the firm had a regulated audit client and had received income from regulated audit work.

This was incorrect because Mr Lawrence had issued an audit report on 28 November 2017 in respect of the financial statements of "A" PLC for the period ended 31 August 2017.

3. Mr Martin Lawrence FCA failed to disclose to the ICAEW Quality Assurance Reviewer during their visit in March 2018 that he had issued an audit report in the name of his firm, M Lawrence & Co, on the financial statements of "A" PLC for the period ended 31 August 2017.

051572

12. Crossley & Davis

Consent order made on 16 March 2020

With the agreement of Crossley & Davis of Blackpool, United Kingdom, the Investigation Committee made an order that it be reprimanded, fined £3,150 and pay costs of £3,842 in respect of the complaint that:

On 22 December 2016, Crossley & Davis signed an audit report on the financial statements of “A” Limited for the period ended 31 March 2016 which stated that the audit had been conducted in accordance with International Standards on Auditing (UK and Ireland) and that the accounts had been properly prepared in accordance with United Kingdom Generally Accepted Accounting Practice and the requirements of the Companies Act 2006, when:

- a. the audit was not conducted in accordance with International Standard on Auditing (UK and Ireland) 500 ‘Audit Evidence’ in that they failed to obtain sufficient and appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion in relation to:
 - i. retentions; and/or
 - ii. provisions.

And/or

- b. the financial statements did not comply with Financial Reporting Standard 102 as:
 - i. a legal claim provision was included within trade debtors, in breach of Financial Reporting Standard 102 21.14; and/or
 - ii. the financial statements failed to disclose the existence and carrying value of the property pledged as security against liabilities, in breach of Financial Reporting Standard 102 17.32(a).

And/or

- c. the financial statements did not comply with Companies (Disclosure of Auditor Remuneration and Liability Limitation Agreements) Regulations 2008 as they failed to disclose the level of auditor remuneration”.

037927

AUDIT REGISTRATION COMMITTEE

ORDER – 12 FEBRUARY 2020

13. **Agutter-Khanderia**

Agutter-Khanderia, Harrow, United Kingdom, has agreed to pay a regulatory penalty of £500, which was decided by the Audit Registration Committee. This was in view of the firm's admitted breach of audit regulation 3.20 for its failure to arrange cold file reviews at least once every three years since 2014.

053313

PRACTICE ASSURANCE COMMITTEE

ORDER – 23 JANUARY 2020

14. Mr Kevin Wheeler FCA

Mr Kevin Wheeler FCA of Whitchurch, United Kingdom, has agreed to pay a practice assurance penalty of £630, which was decided by the Practice Assurance Committee. This was in view of the firm's admitted breach of *Practice Assurance Regulation 4 (2008 Regulations)*; in that he failed to comply with a written assurance given in his responses to section 4.2.1 of the 2010 closing record, to document a risk assessment and check the information held to confirm the identity of all existing clients, as required by the *Money Laundering Regulations 2007*.

052600

All enquiries to the Professional Conduct Department, T +44 (0)1908 546 293